May 17th, 2007
Commission's Secretary
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554
Deena Shetler: deena.shetler@fcc.gov
FCC Contractor: fcc@bcpiweb.com

Re: WC Docket No. 06-210
CCB/CPD 96-20

Ex-Parte Comments of 800 Discounts, Inc., One Stop Financial, Inc., Winback & Conserve Program, Inc. and Group Discounts, Inc

The following are excerpts from AT&T's February 27, 1995 Reply to Many Petitions to Reject Transmittal 8179 that are Relevant to Concluding that the Plans Revenue Commitment Does Not Transfer On a "Traffic Only" Transfer

Transmittal 8179 is at Exhibit L in petitioners 9/27/06 filing and here as exhibit B for the FCC's convenience. Exhibit R in petitioners 9/27/06 filing are various petitions to reject.

AT&T's Opening Summary Here as **EXHIBIT A**

> Transmittal 8179 simply "clarifies" that transfer of all or substantially all of the locations or 800 numbers associated with a term plan (or Contract Tariff) **constitutes a transfer of the plan itself, when it will likely result in a commitment shortfall**.

Points: 1) AT&T understood that this was an industry change—petitioners were not doing anything differently as per 2.1.8 than what had been done by everyone else. The size of the transfer to a deeper discount is why AT&T stopped the transaction not due to AT&T's new defense of transferring S&T obligations while being able to keep the plan.

Point 2) The Tr 8179 remedy that AT&T proposed was to move the plan not move the plan obligations. The tariff offered no option to transfer the plan obligations without transferring the plan.

Point 3) The AT&T statement makes it clear that the S&T obligations would stay with the transferors plan if it was not a substantial "traffic only" transfer and thus that was the status quo that AT&T was attempting to change.

AT&T Feb 27th 1995 Reply to FCC Opposing Petitions to Reject Tr. 8179 SUMMARY PAGE para 2 HERE AS EXHIBIT A

> AT&T filed these revisions to clarify its existing tariff rights, not to change them. AT&T already has the right to protect itself against shams such as that being attempted here **under two provisions** of the General Regulations of Tariff F.C.C. Nos. 1 and 2: the prohibition against **fraudulent means** or schemes to avoid payment of tariffed charges, and the **deposit requirement** for a customer "whose financial responsibility is not a matter of record."

AT&T should have never been allowed to argue its fraudulent use provisions due to the fact that 1) the revenue commitment was already met, and

2) the plans were still pre June 17th 1994 grandfathered and thus immune from S&T liabilities as AT&T conceded in its Dec 20th 2006 FCC filing and

3) these tariffed fraud provisions are only applicable to theft of services not permissible tariffed transactions.

The second provision mentioned: "Deposit requirements," were not included with 2.1.8 at the time of the traffic only transfer as the tariff became prospectively affective in November 1995.

AT&T Feb 27th 1995 Reply to FCC Opposing Petitions to Reject Tr. 8179 at Page 5
HERE AS EXHIBIT A

> What's more, CCI simultaneously submitted to AT&T another set of TSA's which would have transferred substantially all of the end users [ ] on those CSTP II plans – **but not the "lead accounts" which create the "plan structure" – to PSE**.

This was also the view of AT&T's Charles Fash July 7th 1996 letter (exhibit H in petitioners 9/27/06 filing)"move all but two locations from the plan in question to another reseller, thus leaving the **plan structure"** technically in place"

AT&T Feb 27th 1995 Reply to FCC Opposing Petitions to Reject Tr. 8179 at page 7
HERE AS EXHIBIT A

> As explained in its Feb. 16 Letter, AT&T filed these revisions to **clarify** its existing tariff rights, not to change them. AT&T already has the right to protect itself when a customer seeks to transfer the locations **(but not the commitment) *associated with an AT&T term plan*** or Contract Tariff to a third party if, as a result, the customer's net value and ability to pay tariffed charges would be significantly diminished.

Above AT&T conceded that 2.1.8 allowed for "traffic only" transfers without the revenue "**commitment associated with an AT&T term plan"** transferring.

AT&T's Feb 27th 1995 Reply Brief to Petitions to Reject Tr. 8179 at page 11 footnote 16:
HERE AS EXHIBIT A

> PSE, TRA[1] and TFG also assert the customer **may choose in good faith to pay the shortfall charge or assume the risk of doing so** if it is unable to bring in sufficient replacement traffic "**prior to the commitment attainment date"**. PSE Petition at 6, TRA Petition at 14-15; TFG Petition at 7, 11 & 14. The examples used by Petitioners for the most part **deal with situations** where a transfer would **not likely result in a shortfall,** and ***thus are "unaffected"* by the tariff.**

[1] TRA is the Telecom Resellers Association: which represented hundreds of companies—all of which were up in arms petitioning the FCC to reject AT&T's obvious change in section 2.1.8. AT&T's assertion that petitioners were attempting a transfer outside 2.1.8 is countered by the uproar from the entire reseller/aggregator community.

Above AT&T counsel Mr Meade refers to the (PSE, TRA and TFG) petitions to reject regarding use of the pre June 17th 1994 grandfather provision that extinguish the commitment "**prior to the commitment attainment date".** AT&T's position was clearly that in this situation "where a transfer would not likely result in shortfall," would be **UNAFFECTED** by AT&T's proposed tariff change.

Given the fact that AT&T has:

1) Stated that it "filed these revisions to clarify its existing tariff rights, not to change them".

2) Conceded in its Dec 2006 FCC brief, that the plans were immune from S&T liabilities through at least June of 1996

Therefore AT&T must agree that under its existing tariff it was "already clear" to AT&T that petitioners "traffic only" transfer would have been processed even if Tr. 8179 was retroactively enacted by the FCC, because petitioners according to Mr. Meade the "traffic only" transfer would be **unaffected** due to pre June 17th 1994 immunity.

The FCC's Counsel Mr. Bourne during DC Circuit oral argument also confirmed to Judge Ginsburg that this pre June 17th 1994 (discontinuance without liability grandfather clause aka restructuring) was a permissible business maneuver under the tariff---(see exhibit FF in petitioners 9/27/06 filing)

Additionally, Mr. Meade also pointed out that several of the petitions to reject Tr 8179 correctly stated that a plan can be discontinued and simultaneously merged into a new plan "**prior to the commitment attainment date"** i.e the plans fiscal year end true up/shortfall calculation date. This was also a tariffed method of not being inflicted with shortfall.

Furthermore DC Circuit Judge Ginsburg also agreed with the FCC's counsel Mr. Bourne's statement that due to the enormous difference in discount between the CSTPII/RVPP plan (28% discount) versus the CT516 (66% discount) it was certainly "conceivable" that the extra income from CT516 could also more than compensate for any possible shortfall obligation which of course remained on the CSTPII plans.

The FCC's FOIA notes that were written by AT&T tariff expert R.L. Smith (Exhibits K & M in petitioners 9/27/06 filing) also correctly point out that these plans all had various fiscal year ends and therefore traffic could be transferred amongst the plans "as chess pieces moving on the chess board" to strategically utilize the tariffs ability to move traffic to meet fiscal year end commitments.

The FCC 2003 decision besides **explicitly** stated and agreed with the non vacated District Court Decision that plan commitments do not transfer on a traffic only transfer also **implicitly** stated this. How? Because the FCC 2003 decision stated that petitioners would be able to take there traffic back to meet the CSTPII/RVPP plan commitments that obviously stayed with the CCI CSTPII/RVPP plans or simply sell more business onto the CSTPII /RVPP plans which kept its plan obligations with the plan.

It must also be noted that although AT&T now claims that the pre June 17th 1994 shortfall issue should not be a part of the "traffic only" transfer issue, AT&T itself in its Tr. 8179 reply brief points to the June 17th 1994 grandfather provision as a criterion, that would in AT&T's view, allow petitioners "traffic only" transfer to be processed.

There were so many ways to retire plan obligations that petitioners had as Mr. Meade's footnote points out; however when it came to petitioners "traffic only" transfer Mr. Meade ignored all these acceptable tariffed options to totally ameliorate shortfall obligations.

What even more confusing to AT&T's bogus evaluation of petitioners' transaction was the fact that of the 100 other CSTPII/RVPP aggregators, petitioners were by far the most over its commitment thereby showing AT&T it was mindful of meeting commitments to stay in business and continuing to generate income. Just look at the AT&T's Revenue At Risk Report (exhibit HH in petitioners 9/27/06 filing) and it clearly shows that almost all the aggregators were under commitment ---many by millions of dollars--- but petitioners were millions of dollars over commitment as AT&T's own evidence showed.

Finally, AT&T asserted that 2.1.8 ----as was filed in Jan 1995---- simply "clarified" that section 2.1.8 already meant in Jan 1995, that an entire plan must transfer when a substantial "traffic only" transfer was ordered. However, if this were actually the case it would have been a violation of 2.1.8 to transfer only **plan obligations** without transferring the **entire plan.**

AT&T's "1995" bogus interpretation of 2.1.8 does not support AT&T's "2007" bogus interpretation of 2.1.8 which states that "just plan obligations" can transfer.

AT&T can't even get their scams straight.

So the con artists assertion in 2007 is that:

1) when you transfer a few accounts no obligations transfer, (the fictitious deminimis transfer section of the tariff)

2) then when you transfer **more than a few accounts but less than "substantially all" accounts** you need to transfer just the two account bad debt provisions listed within 2.1.8 then

3) when you transfer "substantially all' accounts just the **plan obligations** must transfer (i.e the new scam) the old scam was mandating the entire plan must transfer. AT&T had to change its scam when the DC Circuit figured out that you can transfer "traffic only" without the plan. It was just another little AT&T scam adjustment needed to con everyone.

And according to AT&T all this is already contained within 2.1.8 in Jan 1995, it only needed a little clarification!!!

We can't wait to see AT&T counsel arguing this total nonsense before the DC Circuit with a straight face. Obviously AT&T's top gun David Carpenter will not be arguing this AT&T nonsense, as he already admitted that the FCC advised AT&T that AT&T's 2.1.8 interpretation was nonsense.

Mr. Carpenter during Third Circuit Oral (Pg 43 exhibit O in petitioners' 9/27/06 filing:

David Carpenter:

> The FCC asked us to withdraw the complaint because **the FCC thought we had done more in the tariff language than codify** what the tariff already meant because it went beyond prohibiting these sorts of transfers of plans that would affect transfers of individual locations.

Additionally, the mere fact that AT&T concedes that there needed to be clarification/codification means AT&T loses by default in any event as tariffs by law **must be explicit.**

See attached for the FCC's convenience here as exhibit B which is TR 8179 originally filed as exhibit L in petitioners 9/27/06 filing.

AT&T simply was going to make up bogus excuses not to transfer accounts from 28% to 66%. The scamming of the Courts and the FCC that AT&T has engaged in over 12 years should be given an award by the National Council of Defense Attorneys; but justice should now prevail and AT&T's charade be stopped.

Respectfully Submitted,
Winback & Conserve Program, Inc.
Group Discounts, Inc.
800 Discounts, Inc

/s/ Al Inga
Al Inga President